

# Demanding attention

Managing risks with demand-side response, to improve consumer experience tomorrow



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# Joint foreword

**The evolution of the energy retail market is a core element of the UK's transition to net zero.** As we decarbonise how we travel, how we heat our homes and our energy generation, it's likely we'll see increasing adoption of electric vehicles, heat pumps, solar and storage and smart domestic appliances. These products might mean we need to increase how much electricity we produce but they also offer new potential to be 'flexible' with how and when we use it. For example, using more electricity when renewable generation is high. Doing so will help us maintain energy system resilience in a cost effective way, reducing costs for energy bill payers.

It's possible companies will offer consumers services to help them use electricity flexibly, balancing the grid whilst using smart controls to cater to the needs of their customers. Many companies, including members of Energy UK (EUK) and the Association for Decentralised Energy (ADE) are already offering such services, whilst innovation in the market continues to broaden what those services could look like.

Citizens Advice's vision of the future energy market is one that is: inclusive by design and recognises the essential nature of energy supply. It should facilitate and encourage innovation, be accessible by all and treat everybody fairly, regardless of their circumstances.

To achieve this, it is vital that the market is proactive in identifying any gaps in consumer protections as these propositions become more popular. Given the critical importance of this developing market and the high potential for innovation, we need to ensure that we are delivering positive consumer outcomes that enable and encourage others to make the transition to low carbon.

This report therefore seeks to provide insight into areas of consumer protection most relevant to this evolving set of propositions, with a broad analysis of how far existing policy and legislation addresses these areas. Some of the risks highlighted in the report are expected to fall away as rewards for participation are established, whilst new risks may emerge over time as the market changes or more evidence becomes available of potential harm.

Many independent energy retailers and independent aggregators are conscious of ensuring positive outcomes for consumers. EUK, ADE and Citizens Advice have set out in this report a series of different approaches to energy services to identify any gaps in protections. This is the first step in delivering these benefits to consumers as we continue towards net zero.

# Background

Demand Side Response (DSR) incentivises people to change the way they use energy based on price signals. DSR can help Great Britain to reach its target to achieve net zero carbon emissions by 2050 by allowing more intermittent renewable energy to be connected onto the grid.

There are significant potential benefits for people who want to use energy at times when prices are lower, or even sell energy to the grid when the system needs it most. Domestic DSR can also help to reduce overall costs for energy consumers, by reducing the need to build or upgrade our current energy infrastructure.

Getting consumer protections right from the outset will be essential to ensure the success of these services and technologies. While industrial DSR is already relatively widespread, DSR in homes is still relatively nascent. We know that not everyone has the same ability to access these offers and that people's early experiences of a market can shape their ongoing engagement and trust so now is a good time to consider some of these risks, and the current landscape of protections that might address them.

**To progress this discussion, Citizens Advice, ADE, and EUK have together developed a risk register for domestic DSR**

The risk register outlines risks we are aware of, based on the current offers in the market. It is likely that, over time, some risks may fall away whilst new ones may emerge, as the market develops fully. This register takes proactive steps to recognise potential risks and it is our hope these risks are managed appropriately by government, regulators and industry so that this market expands and benefits consumers.

In this register, we consider:

- **Potential consumer risks**
- **Where they are covered by existing legislation**
- **What work is currently being undertaken to address these risks in the future**
- **Where there is likely to be a protection gap in the future**

# Pre-contract risks

## 1 Consumer unwillingness to engage

### About

Consumer unwillingness to engage could be due to:

- lack of trust
- lack of concern for energy costs
- hassle factor leading to higher bills

Same risks as 2, but to a lesser degree as long as these consumers have access to the right information but making a choice to not engage.

### Is it covered somewhere already?

Not covered.

### Current activity (January 2021)

No current activity.



### Level of protection

**No protection**

Unlikely to be covered currently

## 2 Consumer inability to engage

### About

Consumer inability to engage could result from:

#### Digital exclusion or lack of confidence

This could lead to multiple types of risks at marketing, use of service and customer support level.

#### Unavoidable inflexibility of electricity use

This could lead to:

- unfair penalisation for certain consumer demographics (especially if not being able to participate leads to a greater burden of energy system costs)
- unfair access for certain consumer demographic

#### Living in the private rented sector

This could prevent participation from tenants as they may lack autonomy to make decisions or

### Existing legislation

Where DSR is offered as part of a supply contract this could be covered by the relevant Standard Licence Conditions.

The Equalities Act could, in theory, protect some individuals but it is specific to people who cannot access the information due to a specific barrier.

### Current activity

No current activity.



### Level of protection

**No protection**

Unlikely to be covered currently

technology and services fail to take their needs into account.

Overall these may result in some customers being unable to realise the potential lower energy costs or wider benefits that can accrue to those able to participate.

### 3 Mis-advertising and other mis-information about expected revenue or savings

#### About

This risk is unlikely to be significant where models offer fixed payments independent of revenues received.

However, the risk increases if payments start to reflect an individual's behaviour or revenues received are not fixed or are shared; as occurs in the I&C market.

Information about different domestic DSR offers must be clearly presented and be easily comparable to support consumers to make informed decisions.

#### Existing legislation

Where DSR is offered as part of a supply contract this would be covered by the relevant Standard Licence Condition e.g. SLC25.

The new Electricity Directive states that, as from the end of 2020:

**Member States shall ensure that market participants engaged in aggregation fully inform customers of the terms and conditions of the contracts that they offer to them.**

There are limited protections under general consumer law. The Consumer Rights act 2015, states that contract terms must be prominent and transparent. If a contract term is not prominent or transparent, it can be assessed for unfairness.

Consumer Protection from Unfair Trading Regulations 2008 Act protects consumers from unfair or misleading trading practices and ban misleading omissions. Redress for failure of service can only be achieved through the courts.

The UK Code of Broadcast Advertising (BCAP Code) and the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (CAP Code) provide consumers with protection against misleading or otherwise harmful advertising.

#### Current activity

No current activity.



#### Level of protection

##### Limited protection

Whilst this may be covered in general for both suppliers and independent aggregators under general Consumer Law, the regulation may not be specific enough or as easily enforceable as sectoral regulation.

Consumer law protects against unfair practices, whereas sectoral regulation calls for fair practices (engagement with domestic consumers, by suppliers or their representatives, must be fair, honest, transparent, appropriate and professional (a higher standard than the general consumer law prohibition on poor behaviour).

Under sectoral regulation tariffs and terms of contract must be easily identifiable, clear and easily comparable.

Any environmental claims must be supportable.

## 4 Mis-advertising and other mis-information about expected cost

### About

Domestic DSR offers may begin to advertise the revenue benefits of installing more flexible loads. Such appliances may come with higher running costs for bulk electricity supply that must be clearly explained and understood by consumers before making a decision.

There could be a lack of suitable tools or data available to help consumers make accurate price comparisons/estimations.

### Existing legislation

Where DSR is offered as part of a supply contract this would be covered by the relevant Standard Licence Condition e.g. SLC25

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The UK Code of Broadcast Advertising (BCAP Code) and the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (CAP Code) provide consumers with protection against misleading or otherwise harmful advertising.

### Current activity

Regulations for energy smart appliances may include definitions for the way in which smart appliances should be labelled and described.

The BEIS Smarter Tariffs Comparison project has funded the development of a tool to demonstrate how smart meter-enabled tariffs can be compared. The project is due to be completed by March 2021.

Ofgem's MiData project aims to allow energy customers to quickly, securely and easily share their energy data with trusted third parties. The aim is to help consumers use their data to more accurately compare smart tariffs and energy products. Ofgem has paused MiData development in 2020/21 to align with other industry programmes. Cross-sector work in this area is taking place through the Smart Data Review.



### Level of protection

#### Limited protection

Whilst this may be covered in general for both suppliers and independent aggregators under general consumer law, the regulation may not be specific enough or as easily enforceable as sectoral regulation.

Under sectoral regulation only "appropriate" products can be marketed to consumers (supplier needs to think about someone's characteristics, ensure the product won't require unreasonably low or high energy consumption, etc)

## 5 Opaque and complicated terms and conditions

### About

DSR products and services are new and complicated concepts for consumers with financial risks and high levels of asymmetric information between companies and consumers. As such, transparent and clear T&Cs are crucial.

### Existing legislation

Where DSR is offered as part of a supply contract this would be covered by the relevant Standard Licence Conditions, e.g. SLC0, SLC22.

Limited protections under general consumer law. The consumer rights act 2015 states that contract terms must be prominent and transparent. If a contract term is not prominent or transparent, it can be assessed

### Current activity

The EU Electricity Directive introduces a sectoral approach to aggregators. BEIS is assessing how to take this forward.



### Level of protection

#### Limited protection

Whilst this may be covered in general for both suppliers and independent aggregators under general consumer law, the regulation may not be specific enough or as easily enforceable as sectoral regulation.

for unfairness. Consumer Protection from Unfair Trading Regulations 2008 Act protects consumers from unfair or misleading trading practices and ban misleading omissions. Redress can only be achieved through the courts.

Future clarification question about what markets DSR participate in and are there any specific consumer protections needed for those markets (i.e. what financial risk are they exposed to).

# Risks during use

## 6 Lack of interoperability/lock-in due to technology

### About

This could be the case if software systems enabling DSR aggregation or energy smart appliances are not interoperable. Under such circumstances, consumers face barriers to switching between, or entering into new contracts with, other energy service providers. There also may be difficulty understanding the term 'smart' and what this means for consumers.

### Existing legislation

Limited protections under general consumer law. The Consumer Rights Act 2015, states that contract terms must be prominent and transparent. If a contract term is not prominent or transparent, it can be assessed for unfairness. Unfair terms may include excessive early termination charges. Redress can only be achieved through the courts.

### Current activity

The British Standards Institute (BSI) standards on Energy Smart Appliances aims to ensure interoperability of DSR services.

Interoperability with European technologies and software will be partially shaped by UK-EU trade negotiations.



### Level of protection

#### Limited protection

A test and trial approach may be required to ensure full interoperability of the BSI standards. Open questions include BSI's long-term participation in the European standards bodies and the relevance of developing EU measures and strategies.

General consumer law would not be sufficient to mitigate against this risk.

## 7 Complexity emerging from uncertain asset ownership and bundled products

### About

Flexibility may involve investing in high-capex equipment that pays back over time. This could be done either by the consumer directly or by the flexibility provider. Where the investment is made by the flexibility provider, there should be fair terms and conditions regarding contracts and exit terms.

Business models are emerging where a supplier or DSR provider bundles electricity supply with other services.

There must be transparency of the terms and conditions of bundled products/services.

Consumers should know:

- what the ownership status of a product may be and any consequences that may arise from this

### Existing legislation

Where DSR is offered as part of a supply contract this would be covered by the relevant Standard Licence Conditions, e.g. SLC0, SLC22 and SLC25.

Limited protections under general Consumer law. The Consumer Rights act 2015, states that contract terms must be prominent and transparent. If a contract term is not prominent or transparent, it can be assessed for unfairness. Unfair terms may include excessive early termination charges. Consumer Protection from Unfair Trading Regulations 2008 Act protects consumers from unfair or misleading trading practices and ban misleading omissions. Redress can only be achieved through the courts.

### Current activity

Electricity Directive requires exit fees to be proportionate and not to exceed the direct economic loss to the providers. The burden of proof lies with the provider. The regulator/competent authority is required to monitor this.

Provisions on transparency of contract terms for bundled products are introduced in the EU Electricity Directive and in the European Electronic Communications Code (which gives Ofcom oversight powers where products are bundled with telecoms). Electricity Directive also requires "where necessary" Alternative Dispute Resolution (ADR) bodies to cooperate to provide simple, fair, transparent, independent, effective and efficient mechanisms for any dispute arising from bundled products or services.



### Level of protection

#### Limited protection

For bundled products the bundling itself is likely not covered.

Whilst it may be partially covered in general for both suppliers and independent aggregators through general consumer law, there may be gaps for specific activities not specifically covered through consumer law for parties not licensed as a supplier.

- what happens if you decide to leave one contract earlier than anticipated.
- what the costs of each individual product or service may be

Certain models may be covered by FCA regulation - for example, the Consumer Credit Act

As flexibility markets develop, this risk may need to be considered in more detail.

## 8 Potential for 'lock-in'

### About

The potential for lock-in could occur due to long term contracts, and wider complexity emerging from uncertainty around asset ownership.

Consideration will be needed with regards to how consumer protection is maintained where a consumer signs a long-term agreement for the DSR provider or supplier to pay for the upfront installation cost of assets or metering. Consideration will also be needed for situations where a customer's circumstances change and a product is no longer suitable.

Flexibility may involve investing in high-capex equipment that pays back over time. This could be done either by the consumer directly or by the flexibility provider. Where the investment is made by the flexibility provider, there should be fair terms and conditions regarding contracts and exit terms.

### Existing legislation

This may be covered by FCA regulation. Leasing, hire and potentially credit agreements are regulated so this could be covered but it is unclear whether this is definitely the case and whether this protection is sufficient to prevent lock-in. There needs to be clarification over asset ownership in the contract to define which protections cover it.

Regarding contracts where the bundle includes energy supply, domestic supply requires specific reasons for objecting to a customer leaving a contract, with the contract itself not included in that list of reasonable objections. Suppliers can charge a fee for exiting the contract early and a similar mechanism is expected to be used in some bundled products. SLC0 specifically includes discretion to apply or waive these charges. This enables the barrier of up-front cost of assets to be removed for those unable to pay, so should be enabled. Any such mechanism must be clearly set out in terms and conditions, as per previous requirements.

There are limited protections under general consumer law. The Consumer Rights Act 2015, states that contract terms must be prominent and transparent. If a contract term is not prominent or transparent, it can be assessed

### Current activity

Electricity Directive requires exit fees to be proportionate and not to exceed the direct economic loss to the providers. The burden of proof lies with the provider. The regulator/competent authority is required to monitor this.



### Level of protection

#### Limited protection

This should be covered but may need some clarity regarding specific provisions and how well people understand the terms and conditions in contracts and how the Electricity Directive might be interpreted.

The level of protection for consumers should be proportionate - for example, the costs of metering will be significantly less than the cost of, for example, an electric vehicle charger.

for unfairness. Unfair terms may include excessive early termination charges. Consumer Protection from Unfair Trading Regulations 2008 Act protects consumers from unfair or misleading trading practices and ban misleading omissions. Redress can only be achieved through the courts.

## 9 Concerns about access to individual disaggregated data

### About

As domestic DSR continues to develop, significant individual data to the level of individual appliance use will be collected, stored and used.

### Existing legislation

GDPR means that personal data can only be processed if there is a lawful basis to do so, and outlines what constitutes a lawful basis. Data collected for half hourly settlement is collected on an opt-out basis. This can only be used for settlement.

The smart meter Data Access and Privacy Framework (DAPF) was established to safeguard consumers' privacy, whilst enabling proportionate access to energy consumption data. However, this only relates to smart meter data accessed via the DCC.

The DCC requires 'other users' accessing data through the DCC have to meet minimum standards for data and cyber security.

### Current activity

The Electricity Directive empowered the European Commission to develop secondary legislation to create an interoperability framework for data access and exchange across national borders. Further upcoming initiatives include a proposed DSR network code (currently undergoing a gap analysis) and a digitalisation of energy action plan.



### Level of protection

#### Limited protection

Basic protection is covered through GDPR but there may be further sectoral specific protections needed depending on how data is collected, by whom and to improve consumer understanding and outcomes, given many consumers feel they don't know their data choices.

## 10 Poor installation and unclear maintenance obligations of assets such as batteries

### About

This will include competent installers, correct installation and notification of other bodies (e.g. DNOs), warranty and liabilities, clear responsibilities, monitoring, audits, enforcement and support if issues arise.

### Existing legislation

Some requirements to notify DNOs but poorly enforced.

In respect to goods generally, see Consumer Rights Act Part 1, Chapter 2 and the Supply of Goods and Services Act sections 4, 11D and 11J

### Current activity

Provisions in the Electricity Directive (e.g. introducing frameworks for active consumers and Citizens Energy Communities) potentially raise related issues but the UK-EU trade negotiations leave open questions about



### Level of protection

#### No protection

Unlikely to be covered currently. There are gaps for specific technologies and many standards are voluntary.

for goods contracts not covered by the Consumer Rights Act. The Sale of Goods Act 1979 (as amended) provisions continue to regulate contracts beyond Consumer Rights Act including an implied term that goods sold in the course of business will be of satisfactory quality.

There may be certain protections in relation to the coordination of retrofit (PAS 2030/2035) and security maintenance of energy smart appliances (PAS 1878) and potential new certification of PAS 1878.

In relation to installation there is no regulation to date, only standards and loose governance. There is also limited protection through voluntary consumer codes. This protection may be more enforceable within schemes.

General consumer protections: Services and digital content must be as described, of reasonable quality and fit for purpose.

enforcement and obligations for providers based outside the UK.

MCS is currently in the final stages of developing a Standard for Battery Storage.

## 11 Exposure to financial risk

### About

As domestic loads and storage are incorporated into broader DSR portfolios, they are likely to be placed into several different markets at both distribution and national levels. Participation in these markets will entail different levels of financial risk for non-delivery; noting that in all markets currently penalties do not exceed income foregone.

For some business models, consumers may be offered a stable tariff with the company taking on the risk of such price shocks. In others, there may be restrictions placed on this.

### Existing legislation

Where DSR is offered as part of a supply contract, suppliers may be covered through a broad definition of Standard Licence 0, SLC 25 and SLC31F.

The content of contracts, in particular domestic consumer contracts, is prescribed so that rights including those on dispute resolution, renewal and termination are made particularly clear.

Limited protections under general consumer law. The Consumer Rights Act 2015, states that contract terms must be prominent and transparent. If a contract term is not

### Current activity

Some provisions for price shocks in Electricity Directive

The provisions in the Electricity Directive about balancing responsible parties mean responsibility is placed on consumers unless expressly reassigned to the aggregator. This may be subject to national interpretation of the directive.



### Level of protection

#### Limited protection

Whilst may be covered in general for both suppliers and independent aggregators through general Consumer Law, there may be gaps for both suppliers and independent aggregators.

Energy supply contracts are prescriptive and prices are capped, which offers more protections. In general consumer law, some people are protected from unfair prices (if the price wasn't set or agreed in advance of purchase/service provision) - much weaker protection.

It is important that any risk to consumers is limited, risks are passed to consumers only when they are able to manage them and any risk is clearly communicated to consumers.

prominent or transparent, it can be assessed for unfairness. Unfair terms may include excessive early termination chargers. Consumer Protection from Unfair Trading Regulations 2008 Act protects consumers from unfair or misleading trading practices and ban misleading omissions. Redress can only be achieved through the courts.

## 12 Exposure to cyber threats

### About

It will be important that domestic DSR software or hardware is not vulnerable to hacking. This may present as two separate risks - one being to the customer whose assets are hacked, and one to national infrastructure if a large number of assets are controlled as one.

### Existing legislation

NIS Directive places an obligation to inform them if you are a threat to critical national infrastructure.

### Current activity

The BSI energy smart appliance programme should place obligations on aggregators and manufacturers in relation to cybersecurity.

Energy UK retail cyber security working group is working to collate the range of government work streams on this and set out industry principles.

The EU launched a consultation on the revision of the NIS Directive. This is complemented with additional measures such as the drafting of a cybersecurity network code and planned EU legislation on cybersecurity of smart devices.

Citizens Advice has published [research](#) into how people understand the benefits of smart appliances and makes recommendations for how we might protect consumers.



### Level of protection

#### Likely to be protected

Likely to be covered by existing work.

The NIS directive is unlikely to cover this given each individual user or aggregator will not be a threat until they reach a certain threshold. However, the risk is likely to be covered by ongoing work, through other workstreams..

## 13 Confusion due to multiple parties interacting with the consumer

### About

If, for example, it becomes not only possible but common for multiple parties to offer services directly to the consumer, this risks it no longer being clear who holds responsibility for consumer protections and who the consumer should contact in case of issues.

### Existing legislation

Limited protections under general consumer law. The Consumer Rights Act 2015, states that contract terms must be prominent and transparent. If a contract term is not prominent or transparent, it can be assessed for unfairness. Consumer Protection from Unfair Trading Regulations 2008 Act protects consumers from unfair or

### Current activity

No current activity



### Level of protection

#### No protection

Unlikely to be covered currently. The P379 BSC mod won't cover the governance of multiple suppliers, with potential consumer issues left unresolved; noting that currently the supplier hub model reinforces the primary role of the

misleading trading practices and bans misleading omissions. Redress can only be achieved through the courts.

## 14 Confusion if DNO uses emergency charge limitation

### About

This might include a problem with the meter due to Emergency Charge Limitation, the consumer's bill or interference with a particular type of offer (for example, free charging at a certain time period) or damage to the vehicle. There may also be risks with overuse if they do not respond appropriately to the situation, upon identification.

### Existing legislation

No current protections

### Current activity

This could be dealt with through the technical modification going through the Smart Energy Code (SEC) and the governance modification going through Distribution Connection Use of System Agreement code (DCUSA), though this has been temporarily paused.



### Level of protection

**Likely to be protected**

## 15 Not meeting energy needs

### About

For example, if the consumer cannot reach a sufficient heating level.

This could be due to the consumer having been sold an inappropriate product or service, or they have not been given a sufficient level of control over their energy assets to allow for short term or sudden changes in their energy needs / mis-management of contract. There might also be a situation where products or services discourage customers to use energy when they need to.

### Existing legislation

Where DSR is offered as part of a supply contract, suppliers may be covered through a broad definition of Standard Licence 0.

Can load limit in licence, but that is tantamount to disconnection so subject to the same requirements as disconnection.

### Current activity

No current activity.



### Level of protection

**Limited protection**

Likely gap with non-suppliers.

Less likely to be a risk under sectoral regulations but any future reforms to this will need to consider this risk.

## 16 The needs of consumers in vulnerable circumstances

### About

This could apply to both service or product design and operation.

This could be due to a lack of coordination with the Priority Service Register or industry approaches to vulnerability.

### Existing legislation

Where DSR is offered as part of a supply contract, then may be partially covered under the Supplier Licence Conditions. For example, a broad definition of Standard Licence 0.

### Current activity

No current activity.



### Level of protection

**Limited protection**

Protection gap for unregulated service providers.

# Risks when something goes wrong

## 17 Lack of access to redress

### About

This could include a lack of even basic complaints handling procedures.

### Existing legislation

In place for suppliers and energy networks, where related to their licensed activities.

### Current activity

No current activity



### Level of protection

#### No protection

Lack of obligation on any other actors. Consumer Rights Act 2015 allows for ADR if the business is willing. An example of voluntary ADR includes the Heat Trust.

See comment above about bundling.

## 18 Insurance against issues with assets as a result of DSR actions

### About

This could include both deterioration of the asset health or damage to the asset.

### Existing legislation

This would be set out under T&Cs so specific to the kind of business model.

### Current activity

No current activity



### Level of protection

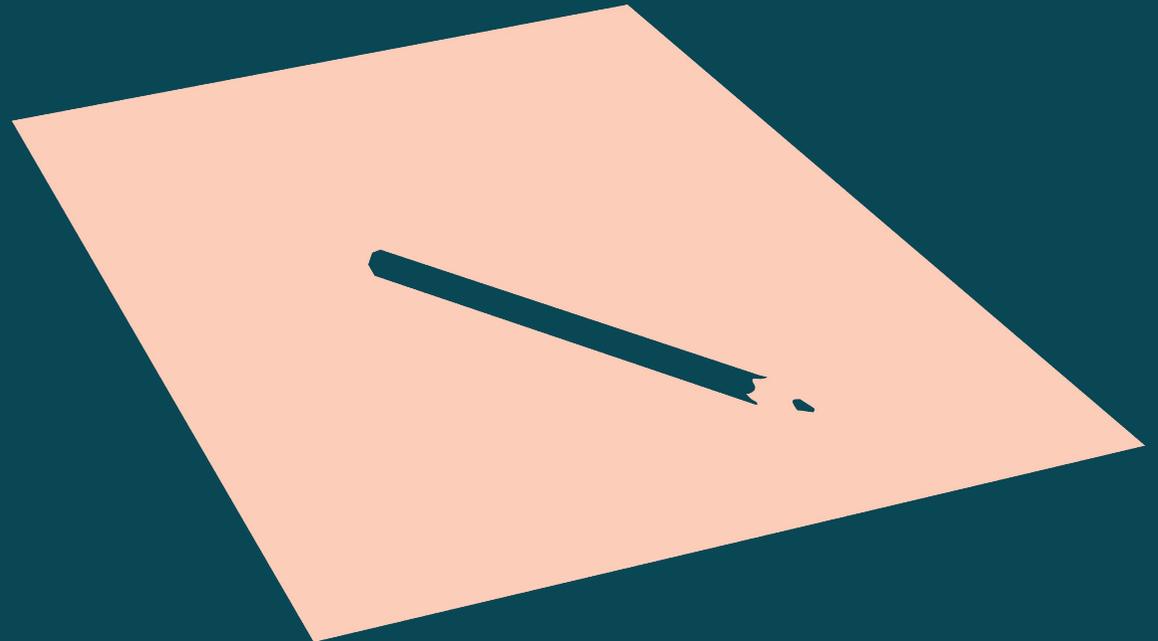
#### No protection

Likely a gap unless covered by T&Cs.

# Next steps

As DSR in homes is a relatively new area, we expect some of the risks in this document to fall away while others may emerge as offers change and evidence is collected. Citizens Advice, ADE and EUK will keep the risk register as a live document, regularly reviewing how consumers are affected by these risks. We will continue to work collaboratively with government, regulators and industry to support the market and protect consumers.

If you have any comments or feedback on the risk register then please email  
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